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**From:** Renilson, Neil [NRenilson@LothianBuses.co.uk]  
**Sent:** 13 November 2006 22:18  
**To:** Alastair Richards - TEL  
**Subject:** RE: DPOFA for Infraco bidders

Thanks – very amusing to see DLA’s version of the truth – utter lies in anyone else’s language – still we always knew Fitchie was a charlatan . Not worth kicking up a stink now – its history , but Serves to remind us never to believe or trust DLA in general and Fitchie in particular . Cheers Neil .

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**From:** Alastair Richards - TEL [mailto:Alastair.Richards@tie.ltd.uk]  
**Sent:** 13 November 2006 19:33  
**To:** nrenilson@lothianbuses.co.uk  
**Subject:** FW: DPOFA for Infraco bidders

Neil,

you may find it amusing that apparently the reason DLA provided LB with a castrated version of the DPOFA back in the bad old days was because we asked for it!!

See the second half of the email below....I wasn't going to bother to set the record straight unless you want me to?

Regards,

Alastair

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**From:** Bob Dawson  
**Sent:** Mon 13/11/2006 16:39  
**To:** Hecht, Philip  
**Cc:** Alastair Richards - TEL; Fitchie, Andrew; Fitzgerald, Sharon  
**Subject:** RE: DPOFA for Infraco bidders

Phil,

Thanks for sending this through, I have sought Transdev’s formal confirmation of agreement.

Also, I take your point about revealing certain aspects but equally it reinforces others.

Given that there isn’t an abridged summary or Heads of Terms then on balance this approach is probably the most pragmatic solution to give the Bidders the information that they have requested.

Regards

Bob Dawson  
Procurement Manager

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**From:** Hecht, Philip [mailto:Philip.Hecht@dlapiper.com]  
**Sent:** 13 November 2006 14:29  
**To:** Bob Dawson  
**Cc:** Alastair Richards - TEL; Fitchie, Andrew; Fitzgerald, Sharon  
**Subject:** DPOFA for Infraco bidders

Bob

Further to your recent request to Andrew, please find attached a version of the DPOFA for disclosure to the Infraco bidders. As agreed, we have stripped out all references to financials and costings (e.g. the pricing schedules, the percentage retention, value of performance bond, base case assumptions, rates, the financial model etc). However, the main contractual provisions of the negotiated DPOFA remain intact.

Alastair, please note that we have not taken the Lothian Buses version of the DPOFA as a starting point because the exposure of some of the drafting in the DPOFA (which was stripped out of the Lothian Buses version) will be useful in demonstrating to the Infraco bidders that Transdev accepted certain of the contractual provisions which are in the Infraco Contract. For example, provision of an on-demand bond, acceptance of the DRP, the panel members and the Review Procedure. Sharon explained that a number of schedules were not included in the Lothian Buses version of DPOFA because Lothian Buses only wanted to see certain parts of the DPOFA.

It is important to note that by providing the Infraco bidders with the majority of the DPOFA in its final negotiated form, there is a potential exposure to **tie** to the extent that the bidders will have access to **tie's** final agreed positions and the bidders could use this information to obtain a degree of leverage in subsequent Infraco negotiations with **tie** by demanding similar terms to that which were agreed with Transdev.

For example, a few of the contractual mechanisms and defined terms are different between DPOFA and the Infraco Contract, such as the change control procedure and the procedure for claiming relief events. As you will appreciate, some different procedures are necessary given that the Infraco Contract is a construction contract. Clause 24.6 provides another good example - the DPOFA states that **tie** can require Transdev to seek competitive tenders only where costs in relation to a **tie** Change exceed a certain value. In the Infraco Contract, there is no threshold which **tie** needs to meet before requiring the Infraco to seek competitive tenders. Therefore, the Infraco bidders may look at this drafting in the DPOFA and, in negotiations, ask for a similar provision in the Infraco Contract. Indeed, bidders have already flagged the use of competitive quotes as being an issue.

This risk could be mitigated by the DPOFA being more comprehensively stripped down to remove all contractual "concessions" granted by **tie** to Transdev during negotiations. As you will appreciate, this could be a fairly time consuming exercise which could lead to major sections of the DPOFA being removed, as well as many references to "acting reasonably". Also, it may be difficult to effect any amendment, for example, where defined terms might need to be amended (e.g. definition of Operator Default). The amendments could end up being so extensive as to almost result in a partial re-write of parts of the DPOFA. We anticipate that this is a situation which **tie** would not want to bring about, and that a balance must be struck.

The risk could also be mitigated by providing the Infraco bidders with a summary of the contract terms in the DPOFA and providing only the technical schedules in their original form. Given that the DPOFA is not being novated to the Infraco and the Infraco has no contractual relationship with the Operator other than as expressed in Clause 17 of the Infraco Contract, the Infraco should have no "legal" reason for seeing the executed DPOFA contract terms. However, we understand that the Infraco bidders have asked for and are expecting the actual contract as opposed to a summary of its terms, and so this approach may not be possible.

If you have any questions on how to proceed with this or would like us to further strip down the DPOFA or produce a summary of key contract terms (we have done this exercise for CEC), then please contact me or Sharon. Given Jim Harries' recent correspondence on the release of the DPOFA to Infraco bidders, Transdev's approval of the attached version of the DPOFA will need to be sought prior to release to the Infraco bidders.

Kind regards.

Phil

<< 11608559\_1\_UKMATTERS(DPOFA to go to Infraco bidders).DOC>> << 11720333\_1\_UKMATTERS(DPOFA operating appendix - for infraco bidders).DOC>>

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